It may be noted that the language of Section 10(k) does not require, and the Board has never held,[5] that the agreed-upon method envisaged by that section be set forth in a single instrument, signed by all parties to the dispute Indeed, as the chairman of the Joint Board, R J Mitchell, testified, jurisdictional agreements between trade unions are virtually always signed only by the disputing unions, and not by the employers involved, who agree to be bound thereunder in separate instruments, as here, or by various other means

As we have found that all parties to the dispute had agreed upon a method for voluntary adjustment as expressly provided for by Section 10(k) of the Act, we find that the Board is without authority to determine the dispute, and shall quash the notice of hearing

[The Board quashed the notice of hearing]

MEMBER RODGERS took no part in the consideration of the above Decision and Order Quashing Notice of Hearing

[5] See, e g, *A W Lee, Inc, supra, Manhattan Construction Company, Inc, supra, Don Cartage Co, Inc, supra*

Kaiser Steel Corporation *and* Charles Rado and Laurence W. St. John

United Steelworkers of America, AFL-CIO, and Its Local Union No. 2869 *and* Walter P. Las, Eugene A. Nanney, Floyd W. Robinson, William H. Burke, Eugene Kondus, Charles Rado, Darrell Anthony, Laurence W. St. John, and Thomas J. Maloney

United Steelworkers of America, AFL-CIO, and Its Local Union No. 3677 *and* Alfred W. Miller and Robert A. Rankin.
Cases Nos 21-CA-2910, 21-CA-2926, 21-CB-998, 21-CB-999, 21-CB-1000, 21-CB-1001, 21-CB-1002, 21-CB-1009, 21-CB-1010, 21-CB-1023, 21-CB-1025, 21-CB-1016, and 21-CB-1017 December 22, 1959

DECISION AND ORDER

On March 17, 1959, Trial Examiner William E Spencer, issued his Intermediate Report in the above entitled proceeding, finding that the Respondents had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief Respondents filed briefs in support of the Intermediate Report.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and finds merit in exceptions of the General Counsel. Accordingly, the Board hereby adopts the findings and conclusions of the Trial Examiner only to the extent that they are consistent with the Decision herein.

During the critical period herein, Respondents United Steelworkers of America, AFL–CIO, and its Local Union No. 2869, herein collectively called Local 2869, were bargaining agents of Respondent Company's production and maintenance employees while Respondents Steelworkers and its Local Union No. 3677, herein collectively called Local 3677, represented Respondent Company's office and clerical employees. Union-security contracts covering these employees were in effect during this period. Also in effect were contractual provisions providing that a rank-and-file employee in the contract unit who becomes a supervisor may return to his job in the unit without loss of seniority if, while in the supervisory status, he makes payments to the unit's bargaining representative which are the equivalent to monthly union dues. The legality of this contractual arrangement, which Respondent Company and Local 2869 applied in the case of the 16 complainants herein,[1] is the basic issue. The Trial Examiner found no violations of the Act by Respondents. As indicated above, we disagree with the Trial Examiner's conclusion.

Under the contractual provisions in issue, an employee who leaves his job for a supervisory position must, as a condition of reemployment in the unit as described above, pay the equivalent of monthly union dues to the unit's bargaining agent while he occupies the supervisory position. It is beyond dispute, however, that such a person is outside the bargaining unit covered by any contract involved during the period he occupies a supervisory status and is therefore under no legal obligation to make payments to any union as a condition of employment during that period. And if he was free of any obligation to pay union membership obligations while outside the contract unit, at a time when there was no contractual obligation to maintain membership as a condition of employment, we fail to see how he can be made to pay any membership obligation accruing during that period as a condition of reemployment within the bargaining unit. The

[1] We find no merit in Respondent Company's exception based upon the fact that the charges in these cases were filed by only 2 of the complainants whereas the complaint, as amended at the hearing, alleges discrimination against 16 complainants. All the discriminatees were in essentially the same position and the Respondent was in no way prejudiced by the enlarged complaint. *N.L.R.B.* v. *Gaynor News Company, Inc.*, 197 F. 2d 719 (C.A. 2), affd. 347 U.S. 17, 34.

contractual provisions before us provide for just such discrimination in employment and therefore cannot be reconciled with the Act.[2]

As noted above, the contractual provisions found unlawful herein were enforced by Respondent Company and Local 2869. They were applied by those Respondents to deny the 16 complainants in these cases consideration for employment within the contract unit. Although these complainants had left the contract unit and had been serving in a supervisory capacity, on the occasion of the discrimination against them, they were seeking to return to their jobs within the unit and must be viewed as applicants for rank-and-file employment who were entitled to the protection of the Act. We accordingly find that the application of the illegal contract provisions against the complainants and others constitutes additional violations of the Act by the aforementioned Respondents.

Upon the entire record, we find that the Respondent Company, by maintaining and enforcing unlawful provisions in question during the critical period herein, violated Section 8(a)(1), (2), and (3) of the Act,[3] and that Local 3677, by maintaining such unlawful provisions, and Local 2869, by maintaining and giving effect to the unlawful provisions of its contract with Respondent Company, violated Section 8(b)(2) and (1)(A) of the Act, all as alleged in the complaint.[4]

THE REMEDY

Having found, contrary to the Trial Examiner, that the Respondents have engaged in unfair labor practices, we shall require them to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that the Respondents were parties to illegal contractual provisions. We shall therefore order them to cease and desist from entering into, maintaining, or giving effect to such agreements.

While we have found that Respondent Company discriminated against the 16 complainants in these cases, and that Local 2869 caused such discrimination, we find it unnecessary to inquire into the matter of any reinstatement order for the benefit of the complainants, for the record shows that in March 1958 the provisions herein found unlawful were abrogated and all complainants were reinstated within the contract unit without regard to their compliance with the abrogated provisions. However, we shall order Respondent Company

[2] Cf. *Murphy's Motor Freight, Inc.*, 113 NLRB 524. To the extent that *Namm's Inc.*, 102 NLRB 466, is inconsistent with our decision in these cases it is hereby overruled.

[3] Section 10(b) of the Act outlaws any unfair labor practice finding based on the execution of the contract.

[4] See *Houston Maritime Association, Inc., et al.*, 121 NLRB 389. In view of our disposition of these cases, we find it unnecessary to consider the other grounds urged by the General Counsel for finding violations of the Act by Respondent. These unfair labor practices, we find are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

and Local 2869, jointly and severally, to make the complainants whole for any loss of pay they may have suffered as a result of the discrimination against them from the date of the discrimination until their reinstatement. Any backpay shall be computed in a manner consistent with the Board's policy as set forth in *F. W. Woolworth Company*, 90 NLRB 289. We shall also order Respondent Company and Local 2869 to make available to the Board, upon request, payroll and other records to facilitate the checking of the amounts of moneys due under our Order.

In view of our finding that the Respondent Company has rendered assistance to Local 2869 and Local 3677, in violation of Section 8(a)(2) of the Act, we shall order that the Respondent Company cease from assisting or contributing support to Locals 2869 and 3677 or any other labor organization. However, in the circumstances of these cases, including the narrow basis upon which the Section 8(a)(2) violation is found and the fact that the contractual provisions held unlawful are not inseparable from or basic to the remaining provisions of the contracts between Respondents, the policies of the Act will be effectuated without requiring, as in the remedy normally applied where Section 8(a)(2) has been violated, that Respondents cease giving effect to their entire contracts and that Respondent Company withdraw recognition from the Respondent Unions.[5]

As it would not effectuate the policies of the Act to permit Respondent Unions to retain any such payments unlawfully exacted in the manner specifically described hereinabove, we shall also order that the Respondent Company and Local 2869, jointly and severally, and the Respondent Company and Local 3677, jointly and severally, reimburse those affected for all sums paid by them pursuant to Respondents' respective contractual provisions herein found unlawful, liability therefor to begin 6 months prior to the date of the filing and service of the charges against Respondents, and to extend to all such moneys thereafter collected. Considering the limited basis for the Section 8(a)(2) violation found, as noted above, we believe that the validity of the union-security provisions of the contracts between Respondent Company and Local 2869 and Local 3677 was not impugned by the unlawful conduct; nor is it otherwise contended by any party to this proceeding. In view thereof, we believe no broader reimbursement order is warranted in these cases.

ORDER

Upon the entire record in these cases, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

[5] See *Pacific Intermountain Express Company*, 107 NLRB 837, 850.

A. Respondent Kaiser Steel Corporation, Fontana, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Entering into, maintaining, or giving any effect to any arrangement or agreement with United Steelworkers of America, AFL–CIO, and its Locals 2869 and 3677, or any other labor organization, which requires the performance of union membership obligations as a condition of employment, except as authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

(b) Encouraging membership in the United Steelworkers of America, AFL–CIO, and its Locals 2869 and 3677, or any other labor organization, by discriminating in regard to hire or tenure of employment or any term or condition of employment, except to the extent permitted by the proviso to Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

(c) Assisting or contributing support to United Steelworkers of America, AFL–CIO, and its Locals 2869 and 3677, or to any other labor organization of its employees.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Jointly and severally with United Steelworkers of America, AFL–CIO, and its Local 2869, and with United Steelworkers of America, AFL–CIO, and its Local 3677, reimburse all employees for moneys illegally exacted from them in the manner and to the extent set forth in the section hereof entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to compute the amount of moneys due under this Order.

(c) Post at its offices at Fontana, California, copies of the notice attached hereto marked "Appendix A."[6] Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by Respondent Company's representative, be

[6] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

posted by Respondent Company immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Company to insure that said notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in (c) above, and as soon as they are forwarded by the Regional Director, copies of the notice attached hereto marked "Appendix B."

(e) Mail to the Regional Director signed copies of Appendix A for posting by Respondent Unions as provided below herein. Copies of said notice, to be furnished by the said Regional Director, shall, after being signed by Respondent Company's representative, be forthwith returned to the Regional Director for such posting.

(f) Notify the Regional Director for the Twenty-first Region, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith.

B. Respondents United Steelworkers of America, AFL–CIO, and its Locals 2869 and 3677, their officers, representatives, and agents, shall:

1. Cease and desist from:

(a) Entering into, maintaining, or giving effect to any arrangement or agreement with Kaiser Steel Corporation, or any other employer, which requires the performance of union membership obligations as a condition of employment, except as authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

(b) Causing or attempting to cause Kaiser Steel Corporation, or any other employer, to discriminate against employees or applicants for employments.

(c) In any other manner, restraining or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Jointly and severally with Kaiser Steel Corporation reimburse all individuals for moneys illegally exacted from them in the manner and to the extent set forth in the section herein entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all reports, records, and other documents necessary to compute the amounts of moneys due under this Order.

(c) Post at their offices at Fontana, California, copies of the notice attached hereto marked "Appendix B."[7] Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by each Union's representatives, be posted by each Union immediately upon receipt thereof and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Unions to insure that said notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in (c) above, and as soon as they are forwarded by the Regional Director, copies of the notice attached hereto marked "Appendix A."

(e) Mail to the Regional Director signed copies of Appendix B for posting by Respondent Company as provided above herein. Copies of said notice, to be furnished by the Regional Director, shall, after being signed by Respondent Unions' representatives, be forthwith returned to the Regional Director for such posting.

(f) Notify the Regional Director for the Twenty-first Region, in writing, within 10 days from the date of this Order, what steps they have taken to comply herewith.

3. The Respondents, Kaiser Steel Corporation, its officers, agents, successors, and assigns, and United Steelworkers of America, AFL–CIO, and its Local Union No. 2869, their officers, agents, and representatives, shall, jointly and severally, make whole Charles Rado, Laurence W. St. John, Walter P. Las, Eugene A. Nanney, Floyd W. Robinson, William H. Burke, Eugene Kondus, Darrell Anthony, Thomas J. Maloney, Alfred W. Miller, Robert A. Rankin, Clarence Curtis, Charles S. McClure, Mullin Sauter, Earl Williams, and Rex Wirt for any loss of pay they may have suffered as a result of the discrimination against them in the manner set forth in the section herein entitled "The Remedy."

MEMBER FANNING, dissenting:

For the reasons stated in the Intermediate Report, I would dismiss the complaints in these cases.

[7] See footnote 6.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT enter into, maintain, or give effect to any arrangement or agreement with United Steelworkers of America, AFL–CIO, and its Locals 2869 and 3677, or any other labor organization, which requires the performance of union membership obligations as a condition of employment, except as authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL NOT encourage membership in the United Steelworkers of America, AFL–CIO and its Locals 2869 or 3677, or any other labor organization, by discriminating in regard to hire or tenure of employment or any term or condition of employment, except to the extent permitted by the proviso to Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL NOT assist or contribute support to the United Steelworkers of America, AFL–CIO, and its Locals 2869 and 3677, or to any other labor organization of our employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL jointly and severally with United Steelworkers of America, AFL–CIO, and its Local Union No. 3677, reimburse our employees for moneys they were illegally required to pay pursuant to our agreements with the afore-mentioned labor organizations.

WE WILL jointly and severally with United Steelworkers of America, AFL–CIO, and its Local Union No. 2869, make whole Charles Rado, Laurence W. St. John, Walter P. Las, Eugene A. Nanney, Floyd W. Robinson, William H. Burke, Eugene Kondus, Darrell Anthony, Thomas J. Maloney, Alfred W. Miller, Robert A. Rankin, Clarence Curtis, Charles S. McClure, Mullin Sauter, Earl Williams, and Rex Wirt for any loss of pay they may have suffered as a result of the discriminiation against them.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of any labor organization, except to the extent that this right may be affected by an agreement conforming to the applicable provisions of Section 8(a)(3) of the National Labor Relations Act. We will not discriminate in regard to hire or tenure of employment, or any term or condition of employment,

against any employee because of membership in, or activities on behalf of, any such labor organization.

KAISER STEEL CORPORATION,
Employer.

Dated---------- By----------
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

NOTICE TO ALL MEMBERS OF THE UNITED STEELWORKERS OF AMERICA, AFL–CIO, AND ITS LOCALS 2869 AND 3677

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT enter into, maintain, or give effect to any arrangement or agreement with Kaiser Steel Corporation, or any other employer, which requires the performance of union membership obligations as a condition of employment, except as authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL NOT cause or attempt to cause Kaiser Steel Corporation, or any other employer, to discriminate against employees or applicants for employment.

WE WILL NOT in any other manner, restrain or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL jointly and severally with Kaiser Steel Corporation reimburse all individuals for moneys they were illegally required to pay pursuant to our agreements with the aforementioned Company.

WE, the undersigned United Steelworkers of America, AFL–CIO, and Local Union No. 2869, will jointly and severally with Kaiser Steel Corporation make whole Charles Rado, Laurence W. St. John, Walter P. Las, Eugene A. Nanney, Floyd W. Robinson, William H. Burke, Eugene Kondus, Darrell Anthony, Thomas J. Maloney, Alfred W. Miller, Robert Rankin, Clarence

Curtis, Charles S. McClure, Mullin Sauter, Earl Williams, and Rex Wirt, for any loss of pay they may have suffered as a result of the discrimination against them.

UNITED STEELWORKERS OF AMERICA, AFL–CIO,

By_____
(Representative) (Title)

UNITED STEELWORKERS OF AMERICA, AFL–CIO,
LOCAL UNION No. 3677,

By_____
(Representative) (Title)

UNITED STEELWORKERS OF AMERICA, AFL–CIO,
LOCAL UNION No. 2869,

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before the duly designated Trial Examiner in Los Angeles, California, on December 3, 4, 5, and 17, 1958, on complaint of the General Counsel of the National Labor Relations Board, hereinafter called the Board, and answers, respectively, of Respondent Kaiser Steel Corporation, hereinafter called Kaiser, and Respondents United Steelworkers of America, AFL–CIO, and its Local Unions Nos. 2869 and 3677, hereinafter called, jointly, the Union. The issues litigated were whether Kaiser violated Section 8(a)(1), (2), and (3), and the Union violated Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, 61 Stat. 136, hereinafter called the Act. The parties waived oral argument and filed briefs.

Upon the entire record, and from my observation of the witnesses, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT EMPLOYER

Kaiser, a Nevada corporation with its principal office in Oakland, California, operates a steel mill in Fontana, California, where it engages in the manufacture and sale of steel, and annually ships products valued in excess of $50,000 to points in States other than the State of California.

II. THE LABOR ORGANIZATIONS INVOLVED

Respondent United Steelworkers of America, AFL–CIO, hereinafter called the International, and its Locals 2869 and 3677, are labor organizations within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The basic facts*

This ably litigated and expertly briefed case presents as its central issue the problem of whether parties to a collective agreement can lawfully contract to condition the retention and accumulation of seniority in the bargaining unit by persons transferring out of that unit to supervisory jobs, upon their continued payment, while in supervisory status, of union dues.

At all times material to the issues Respondent International and Respondent Local 2869 have been the duly designated bargaining representatives of Kaiser employees in an appropriate unit of production and maintenance employees, and

Respondent International and Respondent Local 3677 have been the bargaining representatives in a unit of office and clerical employees. The unfair labor practices charged against each of the Respondent Unions being substantially identical in character, the Respondent Unions will be referred to as the Union except where it is necessary to distinguish between them. Collective-bargaining agreements between Kaiser and the Union, including union-shop provisions, have been in existence at all times material herein, and no attack is made on their validity except for a so-called foreman's agreement made on or about November 1954. This agreement was in fact a revision of, or supplement to, an earlier agreement executed in August 1945, which provided:

> If an employee is promoted or transferred to a supervisory or other position so as to be excluded from the coverage of the Union Agreement, such employee may return to the seniority unit of the job from which he was promoted or transferred. In such case, he shall be entitled to exercise the same seniority rights in said unit that he would have had had he never left said unit except that he shall thereafter always have less seniority than any employee who was during his absence promoted to a higher position than that which he left.

No attack is here made on the August 1945 agreement; the General Counsel concedes its validity.

In the negotiations on the basic labor agreement between Kaiser and the Union in 1952, the Union demanded that supervisors transferring from the bargaining unit be required to pay union dues, or their equivalent, as a condition for preserving seniority rights in the unit position they had left. Kaiser opposed and successfully resisted this demand in 1952. The Union indicated that it would solicit dues payments from such supervisory personnel on a voluntary basis, and by memorandum dated July 19, 1952, Kaiser advised its supervisory personnel that it had no objection to their payment of union dues but that this was not required of them to preserve their seniority rights in the bargaining unit.

In the 1954 negotiations on a basic labor agreement, the Union's initial position was that supervisors progressing from the ranks should not retain seniority rights in the bargaining unit under any circumstances. Kaiser's position was that it would be of benefit to both Kaiser and its employees to allow the employees to take advantage of promotions to supervisory positions as the level of business operations required, and to "bump" back into their old unit positions when the level of business operations decreased, inasmuch as this would provide for a more flexible supervisory force and insure the availability of qualified personnel for supervisory positions when and as needed. The ultimate resolution of this conflict between the bargaining principals, was the foreman's agreement here under attack. The agreement was reached on or about October 2 or 3, 1954, and was memorialized in a "Letter Agreement" dated November 23, 1954.[1] The agreement provided, insofar as here material, that supervisors transferring from unit positions could continue to accumulate seniority in the unit jobs from which they had transferred by making payments equivalent to monthly dues to the Union.[2] The practical effect of this agreement

[1] It was understood by the parties from the inception of the 1954 agreement that it would apply to Local 3677 as well as Local 2869. However, representatives of Local 3677 in the 1955 wage reopening of their 1954 basic labor agreement requested that a separate document be written to be applicable specifically to their local in the matter of seniority status of exempt employees and as a result of that request an agreement dated February 23, 1956, memorialized the foreman's agreement as applied to Local 3677. As material here it read:

> A. Effective December 1, 1954, all employees in the Office and Clerical Bargaining Unit, who were promoted or transferred to a supervisory or other position so as to be excluded from the coverage of the Union must make payment equivalent to monthly dues beginning October 1, 1954, to Local Union No. 3677 of the United Steelworkers of America if they wish to retain the right to return to the position which they hold in the bargaining unit.
>
> B. All employees affected by this agreement must decide by March 1, 1956, whether or not they wish to be covered by the provisions of this agreement.
>
> C. If an employee decides to make payment equivalent to monthly dues according to A above, and it is determined individually after March 1, 1956, that said employee is not eligible to be covered by the provisions of this agreement, the money paid will then be refunded by the Union.

[2] I agree substantially with this language quoted from the General Counsel's brief: "The 1954 Agreement is merely a condition on the operation of the 1945 Agreement which requires certain individuals to pay money to the Union in order to be guaranteed

was that supervisors who elected to continue to pay dues to the Union could "bump" back into their formerly held rank-and-file jobs any time their supervisory status was terminated. If they did not continue their dues payment while in supervisory status, they were accorded no such privileges.

Immediately after the 1954 agreement had been consummated, Kaiser held meetings with all its supervisors and advised them of the new agreement. Supervisors who had progressed from bargaining unit positions were told of their option (1) to exercise their right to return to their hourly paid positions before December 1, 1954; (2) to retain their supervisory positions, pay the fees to the Union as required by the 1954 agreement, and thereby retain seniority rights in the unit positions they had left; or (3) retain their supervisory positions, not pay the fee to the Union, and thereby abandon the senority rights acquired in the unit positions they had left.[3] By agreement of the bargaining principals, supervisors affected by the agreement were given to the end of the year 1954 to tender payments to the Union in order to "be covered by the agreement." A substantial number of foremen made such payments to the Union, beginning in the last quarter of 1954 and, thereafter, some continued to make such payments while others discontinued the practice at various times.

During the period between October 1954 and December 1957, the 1954 foreman's agreement was applied in a number of cases, there being some movement under it of supervisory personnel to and from bargaining unit and supervisory positions, and no question was raised by either of the bargaining principals with respect to these transfers. In December 1957, however, the steel business being in a state of economic recession, and Kaiser finding it necessary to lay off substantial numbers of employees and supervisors, not all supervisors who wished and attempted to transfer back to their old unit jobs were permitted to do so, and this proceeding is predicated upon the charges of supervisors who were denied the right to "bump" back into their old rank-and-file jobs.

Between early December 1957, and the end of March 1958, some 60-odd foremen were returned to the bargaining unit positions which they had left upon being promoted to supervisory status. A total of some 99 foremen were laid off, and of these some 55 had progressed from the bargaining units.

On March 12, 1958, Kaiser and the Union, upon being advised of the General Counsel's position that the enforcement of the 1954 agreement was unlawful, as stated in Kaiser's brief, "agreed to allow a 'grace period' from March 12, 1958, through March 31, 1958, during which period all supervisors who had come from hourly rated positions could return to those positions whether or not they had paid the union fees required under the 1954 Agreement." It was further agreed by the bargaining principals, that after March 31, 1958, foremen agreements previously in effect would be abrogated and no supervisor could thereafter retain seniority rights in a bargaining unit from which he had progressed, regardless of the payment or nonpayment of union dues. Such action is properly construed not as admission of error but commonsense prudence.

B. *The issues*[4]

The *execution* of the 1954 agreement is not in issue since it occurred more than 6 months prior to the filing of a charge in this case. Its enforcement within the 6-month period is the burden of the complaint and gives rise to a complex of issues. At the threshold we encounter the General Counsel's position that the

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rights which are provided . . . these individuals in the 1945 Agreement. This was the understanding of the parties at the time the [1954] Agreement was entered into." This is not to say, however, that the 1954 agreement was not a fully integrated agreement. It was, and as stated by Respondent Kaiser, it embodied *"all* of the rights and conditions relating to the seniority rights of supervisors" with respect to their former bargaining unit positions.

[3] A number of persons alleged to have been unlawfully discriminated against because of the enforcement of the 1954 agreement, testified that they had no knowledge of it. On the whole I found this testimony unconvincing, and believe the 1954 agreement was of general knowledge among supervisory personnel. In any event, I am persuaded that the contracting principals did all that was required of them in publishing the terms of the 1954 agreement.

[4] Motions by Respondents to dismiss various portions of the complaint because the unfair labor practices alleged therein were not explicitly set forth in the charges filed, upon which ruling was reserved at the hearing, are denied. *N.L.R.B.* v. *Waterfront Employers of Washington, et al.,* 211 F. 2d 946.

1954 agreement is unlawful on its face because it discriminates against employees who do not pay union dues during a period when they are not subject to the terms of a union-shop contract, and because it delegates control of seniority to the Union. On a negative finding on these two questions, there would remain the General Counsel's contention that Respondent International and Local 2869, in their application of the 1954 agreement, did not follow a uniform practice with respect to the dues requirements of that agreement, and therefore, foremen denied "bumping" privileges were laid off or denied employment for reasons other than their failure to pay fees uniformly required within the meaning of the proviso to Section 8(a)(3) of the Act. It is the General Counsel's position that under the circumstances of this case, Kaiser was under a duty to inquire into the methods used by Respondent International and Local 2869 in determining the transfer status of foremen under the 1954 agreement, and that failing to do so, and the International and Local 2869 having applied discriminatory standards in making the said determinations, Kaiser engaged in discriminatory practices violative of Section 8(a)(3) of the Act. Finally, the General Counsel contends that the 1954 agreement unlawfully enhanced the prestige of the Union and represented unlawful assistance to it, thus constituting a violation of Section 8(a)(2) of the Act, and had the effect of restraining and coercing employees in the exercise of the rights guaranteed them by the Act.

At the threshold of the defense we are met with the contention of Kaiser and the Union that the 1954 agreement being restricted in its application to foremen, and foremen being nonemployees under the Act, the guarantees of Section 7 of the Act have no proper application and the Board is, accordingly, without jurisdiction. Various subsidiary defenses meet each of the General Counsel's allegations of unfair labor practices.

C. *Analysis; concluding findings*

Our attention is thus focused on the two principal phases of the case, the 1954 agreement itself and practices on the parties in enforcing it. To further clarify the issues, however, we should look first to the complaint. It is alleged that the Union requested and demanded that Kaiser "lay off or refuse to employ" certain persons because they had not made the payments required by the foreman's agreement, and that Kaiser, acquiescing in the request or demand, did lay off or refuse to employ the said persons. Actually, the Union did not request or demand that Kaiser lay off or refuse to employ any of its supervisory personnel. Because of a cutback in production, and solely for economic reasons, Kaiser, independently of the Union and well within its rights, drastically reduced its supervisory personnel by laying off or discharging the foremen in question. The Union had no control over such action and attempted to exercise no control. Neither is there a question of a refusal to *employ* in rank-and-file jobs foremen whose employment was thus terminated, either in response to the Union's request or demand or otherwise. On terminating the services of certain of its foremen Kaiser was free to employ them in rank-and-file jobs as it saw fit. There is in fact no evidence that any of the foremen, whose services as foremen were terminated and whose charges constitute the basis of the complaint in this case, were at any time material herein applicants for employment. What the Union opposed, and all that it opposed, was the reentry into their former appropriate units in the jobs they had held at the time they transferred to supervisory positions, of the foremen in question, and all that the Union did was to inform Kaiser whether or not the foremen in question had complied with the 1954 agreement by keeping up their dues' payments to the Union during their occupancy of supervisory jobs. On advice that compliance had been had, Kaiser transferred the foreman in question to his former production or clerical job; on advice that compliance had not been had, the foreman in question was refused such transfer and laid off or discharged.

Looking now to the contract itself, there is no question that it was continued in effect and was enforced during the 6-month period preceding the filing of a charge. There is no question that the foremen affected by the 1954 agreement were supervisors within the meaning of the Act. It was so stipulated. As we have seen, in the negotiation of a 1954 foreman's agreement, Kaiser preferred to continue in effect the agreement of 1945, admittedly valid. On the other hand, it does not require psychic powers to perceive that that agreement which operated against the interests of nontransferees remaining in the bargaining units, caused, or would cause when put to the test, dissatisfaction among such nontransferees, and that this was the immediate concern of the Union as their bargaining representative. The extent of that dissatisfaction may be gauged by the fact that when bumping privileges under the 1954 agreement were exercised, those rank-and-file employees who were thereby

deprived of their jobs filed charges of unfair labor practices.[5] It can hardly be doubted that their grievances would have been more firmly grounded, in equity if not in law, had these bumping privileges been exercised by supervisors who were exempt from the payment of union dues required of members of the bargaining unit. The important fact is that the bargaining principals, Kaiser and the Union, through the process of bona fide collective bargaining, reached a compromise on this important issue, which while preserving to transferees to supervisory positions such seniority rights as would enable them to bump back into rank-and-file jobs, required of them if they desired to assert such rights, to pay dues for the maintenance of union representation which, under a valid union-shop clause, rank-and-file employees were required to pay. And while the 1954 foreman's agreement was not incorporated physically in the basic labor agreement negotiated by the parties that year, there is no reason to doubt the testimony of Kaiser officials that the consummation of a basic labor agreement hinged on a settlement of differences with respect to seniority rights of foremen. In short, the settlement of the said differences as incorporated in the 1954 agreement, through the processes of collective bargaining, promoted industrial peace, a prime if not major objective of the Act, and should be allowed to stand free of bureaucratic dictation, unless it is proved by a clear predominance of the evidence that it does violence to some basic right of *employees* guaranteed by the Act. The Act is designed, I believe, not to hinder but to promote bona fide collective bargaining as a means of promoting industrial peace, and the Board "has no general commission to police collective bargaining agreements . . ." *Local 1796, United Brotherhood of Carpenters et al., A.F. of L.* v. *N.L.R.B.*, 357 U.S. 93.

Addressing ourselves to the question of whether the 1954 agreement unlawfully delegated to the Union control of seniority, we must find, as the General Counsel concedes, that seniority is not something that is inherent in employee status but is a "creature of contract." *Aeronautical, etc., Lodge 727* v. *Campbell et al.*, 337 U.S. 521, 526. Obviously, therefore, seniority is a proper subject for collective bargaining and if through collective bargaining a labor organization is able to win for the employees it represents privileges and advantages of seniority, it may lawfully do so. To say that such concessions won at the bargaining table are unlawful merely because they tend to encourage membership in a union, is to commit an absurdity inasmuch as all concessions won by a labor organization at the bargaining table tend to encourage membership in the organization. However, in *Pacific Intermountain Express*, 107 NLRB 837, the Board handed down the doctrine that a contract may not lawfully grant to a union the *final* determination and control over seniority, the theory being that such delegation *unlawfully* encourages membership in the union and that granted such control the union presumptively—and the presumption appears to be an irrebuttable one—will exercise it in a discriminatory manner. Such is the Board's doctrine and I am bound by it but the provision here in question cannot reasonably be said to provide for such a delegation, the terms under which seniority is retained or lost being specifically spelled out in the contract and therefore subscribed to by both Kaiser and the Union, with discretion vested in neither to change or modify those terms. In *Pacific Intermountain Express, supra*, the Board, presumably for explaining why an employer's unilateral determination of seniority was lawful whereas a labor organization's was not, relied on the fact that "the objective standards for determining seniority are derived from information peculiarly within the knowledge of the employer." Here, "the objective standards for determining seniority" are, to the degree complained of, "derived from information peculiarly within the knowledge" of the Union, those objective standards, as set forth in the 1954 agreement, being the payment to the Union of money equivalent to monthly dues. There is in truth here no more delegation of control over seniority than appears in any union-shop contract, and in none of the many cases of employees discharged pursuant to valid union-shop provisions, has it been found, to my knowledge, that the union's say as to who has and who has not paid fees and dues uniformly required under such agreements, represented an unlawful delegation of seniority control. I find that the 1954 foreman's agreement provides for no unlawful delegation to the Union in the matter of seniority determination.

Coming next to the issue of discrimination, we must recognize that not all forms of "discrimination" are unlawful. The Board has held that a labor organization, under a valid union-shop contract, may require of a former member who has let his membership lapse, twice the initiation fee required of employees not previously affiliated with it. *Food Machinery and Chemical Corporation*, 99 NLRB 1430. This was, if we use the word in its broadest dictionary sense, discrimination, but it was

[5] The General Counsel refused to issue a complaint predicated upon the said charges.

permissible because based on what the Board regarded as a reasonable classification, and it had no underlying discriminatory motive. Under any valid union-shop contract, an employee must pay the uniformly required union fees and dues or lose his job. It is the price he is required to pay for union representation, and disposes of "free riders." Here, in a broad sense, there was discrimination as between foremen transferees who continued dues payments and foremen transferees who did not. The former by paying union dues retained, and the latter by not paying union dues lost a valuable right, the right of reentry into their former bargaining units and the repossession of their former jobs in the said units, at such time as their supervisory status was terminated. It must be emphasized that such rights did not exist apart from and independently of Kaiser's contract with the Union. Why, it may be asked, should employees transferring into supervisory positions but who continue to enjoy the fruits of union representation enabling them to bump back into their old jobs at any time their exempt status is terminated, not pay for the retention and exercise of such privileges? Would not employees who remain within the unit and who are required to maintain their union membership, be justly aggrieved on being bumped out of their jobs by persons who had severed all connection with the appropriate unit, including the payment of union dues? Is this not the immediate and substantial concern of the employees' bargaining representatives? It seems to me that all these questions permit an affirmative answer. There is no more reason why persons progressing to supervisory status should retain a vested right in their old rank-and-file jobs without the payment of union dues than that there should be free riders within the bargaining unit. Actually, the only *employees* prejudiced by the foreman's agreement were those employees who were bumped out of their jobs to make way for supervisors transferred back to the ranks, and in view of the General Counsel's refusal to issue a complaint pursuant to charges filed by these employees, it obviously is not the contention here that they were victims of discrimination within the meaning of the Act.

In a similar situation, the Board found valid an agreement which provided for the entry of certain exempt employees into the bargaining unit, with seniority credit obtained outside the unit, upon payment of a union fee. *Namm's, Inc.*, 102 NLRB 466, 470. In that case, the Board found that the parties "concededly negotiated this clause in good faith motivated only by legitimate considerations and without any desire to discriminate against any employee on the basis of his union or antiunion membership or sympathies. Plainly, the exempt employees had no statutory or contractual right to transfer to a unit job with seniority accumulated in jobs not covered by the contract and therefore could not be deemed to be the victims of discrimination simply because they were required to pay a fee to secure such benefits." All of these observations apply with equal logic to the case at hand.

The General Counsel, however, would distinguish *Namm's, Inc.*, on the grounds that in that case the exempt employees had no seniority rights except those conferred on them by the contract in question, whereas here the exempt employees had accumulated seniority under the 1945 agreement and retained it in the face of the 1954 agreement because under Kaiser's master contract with the Union promotion out of the bargaining unit was not listed as one of the several ways in which seniority was lost. This is indeed a distinction but one, I think, without substance, for to hold with the General Counsel on this point would be to say, in effect, that once having agreed on terms governing seniority, the parties could not thereafter, in subsequent contracts, modify, change, or abolish those terms. In other words, agreement having once been reached, the matter was closed to collective bargaining in the negotiation of future contracts. Such a position is not tenable. Clearly, as the General Counsel concedes, the parties in their 1954 agreement set a condition upon the retention of seniority rights extended to exempt employees in the 1945 agreement. Thereafter, exempt employees had no seniority rights unless they complied with the said condition. This was a matter on which the parties were free to bargain and did bargain to an agreement. And while, as previously stated, the 1954 agreement was not physically incorporated in the master agreement, there can be no doubt that there was a meeting of minds in the matter of seniority rights of exempt employees and that the 1954 agreement recorded that meeting of minds and was the entire agreement with respect to the matter. Seniority provisions in the master contract related solely to seniority rights of employees in, and remaining in the appropriate unit and had no bearing whatever on the retention and accumulation of seniority by exempt employees. Foremen transferees from the appropriate units therefore had no seniority rights not conferred on them by the 1954 agreement, and the fact that under prior agreements they had been accorded certain seniority rights appears to me to be of no legal significance.

The General Counsel's further argument that *Namm's, Inc.*, is no longer controlling on the point because of the Supreme Court's decision in *Radio Officers' Union of the Commercial Telegraphers' Union, AFL (The A. H. Bull Steamship Company)* v. *N.L.R.B.*, 347 U.S. 17, 51, I am unable to accept. As the General Counsel sees it, that decision ruled out the "good faith" test which entered into the Board's considerations in *Namm's, Inc.* I think all the Supreme Court said on the point in the *Radio Officers* case was that discriminatory practices otherwise unlawful under the Act are not excused because of good intentions, and I think the Board did not hold in *Namm's, Inc.*, or in any other case to my knowledge, that discriminatory practices otherwise violative of the Act were excused because the parties acted in good faith. Discrimination may exist regardless of motive, as it did in the *Radio Officers* case, but in many other cases motive may be the determining factor on whether or not discrimination exists. This is true of most cases of discriminatory discharge by an employer. Had it been shown in *Namm's, Inc.*, that the seniority provision in question was but a subterfuge for depriving exempt employees of their rights under the Act, the provision doubtless would have been found invalid. But in *Namm's, Inc.*, as here, there was no evidence of subterfuge or discriminatory motive, and apart from such evidence there was no discrimination within the meaning of the Act.

In my opinion, *Namm's, Inc.*, is dispositive of the discrimination issue in this case with respect to the 1954 agreement. There remains, however, the General Counsel's further contention that the 1954 agreement as maintained and enforced had the effect of "interfering with, coercing or restraining employees in the exercise of their rights guaranteed by the Act," in violation of Section 8(a)(1) of the Act, and constituted assistance to the Union in violation of Section 8(a)(2) of the Act.

There is a line of cases in which action taken against supervisors has been found violative of the Act, but the illegal element in each of these cases has been the coercive effect of such action upon *employees*. I am unable to see where the requirement that supervisors pay union dues in order to maintain and accumulate seniority in the units from which they progressed, interfered in any way with the exercise by *employees* of their rights under the Act, unless it constituted some form of assistance which accrued to the advantage of the Union and thereby impressed some form of coercion and restraint on employees and prospective employees of the bargaining units. I can agree substantially with the General Counsel that the requirement that supervisors pay union dues in order to secure future benefits, enhanced, to a degree, the reputation and standing of the Union among rank-and-file employees. A much greater enhancement occurred when Kaiser and the Union executed a union-shop contract. Enhancement in prestige of a labor organization flowing from concessions gained through collective bargaining, as already noted, is part and parcel of the bargaining process. And since admittedly the seniority status of supervisors with respect to the bargaining units was a bargainable matter, and since it must be conceded that the Union in pressing for and obtaining the dues-paying requirement of supervisors was acting as much for the protection of the seniority status of the employees it represented as for the seniority status of persons who might later return to the bargaining unit, I fail to see any distinction whatever in the enhancement flowing from the foreman's agreement and enhancement flowing from any other objective gained through collective bargaining. It should be borne in mind that there is nothing *per se* unlawful about supervisors paying union dues or belonging to unions. While the 1945 agreement was still in effect, Kaiser notified its supervisory personnel that it had no objection to their voluntary contributions to the Union. Contributions under the 1954 agreement were still voluntary in the sense that supervisors progressing from the ranks were free to choose whether or not to come under the agreement. In no sense is the payment of dues by supervisors under the agreement comparable to a direct contribution by an employer to a labor organization. Kaiser did not pay the dues of supervisors who elected to come under the agreement; the supervisors paid the dues out of their own pockets, and they paid them for the purpose of securing to themselves a valuable right, a right, it is repeated, not inherent in the employer-employee relationship but derived solely from contract. I find in this situation no element of unlawful assistance, and no element that interferes with, restrains, or coerces employees in the exercise of their rights under the Act.

Finally, it is the General Counsel's position that, assuming *arguendo* the provisions of the 1954 agreement to be lawful on their face, nevertheless, with respect to the International and Local 2869, there was a pattern of discrimination in the application of the dues-paying requirements. Admittedly and clearly there was no such pattern of discrimination with respect to Local 3677 and the International insofar

as it was designated jointly with Local 3677 as the bargaining representative of Kaiser employees in a clerical unit. Accordingly, without more, I shall recommend the dismissal of the complaint with respect to Local 3677, and the International to the extent that it acted jointly with Local 3677 in representing the clerical unit. It is further recommended that the complaint be dismissed as to Kaiser insofar as the 1954 agreement involved and applied to transferees from the clerical unit represented by Local 3677 and the International.

The pattern of dues payments made by supervisors progressing from the production unit who chose to come under the 1954 agreement was, at least, somewhat erratic, and while I am convinced that this was not by discriminatory design and intent, it poses an issue unless Respondents' contention that the 1954 agreement related solely to supervisors and is therefore beyond the reach of the unfair labor practice prescriptions of the Act, is accepted.

The discussion thus far has been based largely on the premise that the 1954 agreement, in its dues-paying requirement, applied to *employees* and therefore was within the reach of the Act. The recommended dismissal above of a portion of the complaint was based on that premise. Inasmuch as the question may be regarded by some as a close one, I have thought it practical thus far to view the issues in their widest reach, but agreeing as I do with the Respondents' position, I will not at this time prolong my discussion further by reviewing in detail the practice of the International and Local 2869 in their application of the dues-paying requirements of the 1954 agreement, for determining whether it conformed to the proviso of Section 8(a)(3) of the Act.

The 1954 agreement while referring generally to "exempt" employees was known as a foreman's agreement and if it has been applied to exempt persons other than foremen we have no evidence of it. In other words, we are properly concerned here with the retention and accumulation of seniority by *foremen* who have progressed from the bargaining units. The agreement impinged, however, on seniority rights of nontransferees from the bargaining units, and for that reason it may be argued that it was something more than a mere foreman's agreement. It should be borne in mind, however, that the only element in the 1954 agreement here alleged to be unlawful is its dues-paying requirement and that requirement, insofar as we are here concerned, related solely, exclusively to persons occupying supervisory status. No one here has been heard to complain that there was anything wrong in providing for the retention and accumulation of seniority by foremen. The persons whose charges initiated this proceeding are in fact complaining because they were not accorded the seniority rights provided in the 1945 agreement. I fail therefore to see how the dues-paying requirement can reasonably be regarded as anything more than a requirement imposed on supervisors *qua* supervisors. As supervisors they were nonemployees and as nonemployees they did not enjoy the guarantees provided employees by the Act. The required dues payments in no way affected or had any impact on the dues required of rank-and-file employees under the union shop. If there was discrimination—and I have found that there was none within the meaning of the Act—it was discrimination as between supervisors who elected to pay dues and supervisors who elected not to pay dues, and is therefore not within the reach of the Act.

The General Counsel's argument that the discrimination arose at the very moment the supervisor ceased to be a supervisor is based, I believe, on a false premise; namely, that the supervisor at the very instant he ceased to be a supervisor automatically became an applicant for employment. The fact is, as stated in the preliminary remarks of this report, the exsupervisors with whom we are here asked to concern ourselves, did not then become applicants for employment and there is no evidence that they were at any time applicants for employment. A mere applicant for employment has no seniority rights and can assert none. What these exsupervisors demanded was that they be accorded the fruits of a contract from whose provisions they had, by their own election as supervisors, removed themselves. They wanted to be transferred back into their old bargaining unit jobs, displacing, where necessary, employees then holding those jobs. In other words they were applicants not for employment but for *transfer,* with *preferred seniority status.* But any such right accruing to them matured or did not mature, as the case may be, while they were supervisors. Once they ceased to be supervisors, they were free to apply for rank-and-file jobs, just as free as any other prospective employee, and the 1954 agreement in no way conditioned or had any effect on their exercise of that right. For all these reasons I regard the 1954 agreement as one describing

and defining certain rights of supervisors who have transferred from rank-and-file jobs, and accordingly must recommend dismissal of the complaint in its entirety.[6]

On the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Respondent Kaiser is engaged in and at all times material herein has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent International and Respondents Local 2869 and Local 3677 are labor organizations within the meaning of Section 2(5) of the Act.
3. The Respondents have not engaged in any of the unfair labor practices alleged in the complaint.

[Recommendations omitted from publication.]

[6] Cases cited by the General Counsel in support of his position are, in my opinion, inapposite, inasmuch as they merely hold that an applicant for employment may no more lawfully be discriminated against than an employee. Cases cited by the General Counsel on the point: *Phelps Dodge Corp.* v. *N.L.R.B.*, 313 U.S. 177; *Utah Construction Co.*, 95 NLRB 196; *John Hancock Mutual Life Insurance Company* v. *N.L.R.B.*, 191 F. 2d 483.

Producers Transport, Inc. *and* Robert W. Pool

Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Robert W. Pool.

Cases Nos. 35–CA–823 and 35–CB–245. December 22, 1959

DECISION AND ORDER

On August 6, 1959, Trial Examiner Vincent M. Rotolo issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel, the Respondent Company, and the Respondent Union filed exceptions to the Intermediate Report; the Respondent Company and the Respondent Union also filed briefs in support of their exceptions.[1]

The Board[2] has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings,[3] conclusions, and recommendations of the Trial Examiner with the modifications noted below.[4]

[1] The Respondent Company has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] Pursuant to Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Fanning].

[3] The Trial Examiner stated that the Respondent Company's records show that two deductions of union dues were made from Pool's salary in each of the months of May and June 1957; the records show that the deductions were made in May and July 1957. Those records also show that the last dues deduction from Pool's salary was made on September 7, 1957. The Intermediate Report is corrected accordingly.

[4] In adopting the finding of the Trial Examiner that the Respondent Company violated Section 8(a)(3) and (1) in discharging Pool, we rely only on Shop Steward Rimkus'